

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

76-7317

To Be Argued By
Mark J. Lawless

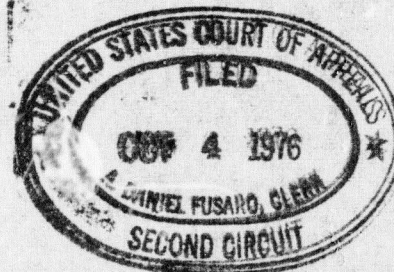
UNITED STATES COURT OF APPEALS

For the Second Circuit

GEORGE STROGANOFF-SCHERBATOFF,
Plaintiff-Appellant,
-against-
HENRY H. WELDON,
Defendant-Appellee

GEORGE STROGANOFF-SCHERBATOFF,
Plaintiff-Appellant,
-against-
CHARLES B. WRIGHTSMAN and
JAYNE WRIGHTSMAN,
Defendants-Appellees

GEORGE STROGANOFF-SCHERBATOFF,
Plaintiff-Appellant
-against-
METROPOLITAN MUSEUM OF ART,
Defendant-Appellee



On appeal from the United States District Court
for the Southern District of New York

BRIEF FOR DEFENDANT-APPELLEE
THE METROPOLITAN MUSEUM OF ART

LORD, DAY & LORD
Attorneys for The Metropolitan
Museum of Art
25 Broadway
New York, New York 10004
(212) 344-8480

Reigh F. Klann
Mark J. Lawless
Of Counsel

UNITED STATES COURT OF APPEALS

For the Second Circuit

GEORGE STROGANOFF-SCHERBATOFF,
Plaintiff-Appellant,
-against-
HENRY H. WELDON,
Defendant-Appellee

GEORGE STROGANOFF-SCHERBATOFF,
Plaintiff-Appellant,
-against-
CHARLES B. WRIGHTSMAN and
JAYNE WRIGHTSMAN,
Defendants-Appellees

Docket No. 76-7317

GEORGE STROGANOFF-SCHERBATOFF,
Plaintiff-Appellant,
-against-
METROPOLITAN MUSEUM OF ART,
Defendant-Appellee

On appeal from the United States District Court
for the Southern District of New York

BRIEF FOR DEFENDANT-APPELLEE
THE METROPOLITAN MUSEUM OF ART

This Brief is submitted on behalf of The Metropolitan Museum of Art (the "Museum"), defendant in case No. 75 Civ. 3174 (DBB) below and an appellee in this Court.

The action against the Museum was consolidated for trial with 74 Civ. 5750 (Stroganoff-Scherbatoff v. Wrightsman) by order of the District Court dated September 30, 1975. That

consolidation was effected on the motion of plaintiff-appellant because of the virtual identity of the facts and issues in the two cases, which are now before the Court on this appeal with a third case raising similar issues. The Wrightsmans and Museum cases involve the same act of seizure by the Soviet Government of an objet d'art, and the invocation of the Act of State Doctrine in each case is therefore necessarily governed by the same operative facts and law.

Indeed, because of the identity of the facts and issues in the cases against the Museum and the Wrightsmans, and to avoid an unnecessary proliferation of papers before this Court, the Museum simply adopts and incorporates herein by reference the Counterstatement of the Case, the Statement of Facts and the Argument contained in the Brief submitted to this Court on behalf of defendants-appellees Wrightsmans.

The Museum traces its ownership of the bust at issue through the Wrightsmans. If the Wrightsmans had good title to the bust, then the Museum similarly has good title. Appellant's papers nowhere raise any issue (other than one involving the technicalities of pleading) which distinguishes the case against the Museum from that against the Wrightsmans. More importantly, no post-acquisition conduct on the part of the Museum is alleged which impairs its title to the bust or which in any way bars the Museum from invoking the Act of State Doctrine in this case.

CONCLUSION

For the reasons stated above, the Order of the District Court entered May 18, 1976 granting summary judgment to the defendants should be affirmed.

Dated: New York, New York
October 4, 1976

Respectfully submitted,

LORD, DAY & LORD
Attorneys for The Metropolitan
Museum of Art
25 Broadway
New York, New York 10004
(212) 344-8480

Reigh F. Klann
Mark J. Lawless
Of Counsel

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Index No. 76-7317

GEORGE STROGANOFF-SCHERBATOFF,

against

HENRY H. WELDON,

Plaintiff
Appellant

AFFIDAVIT OF SERVICE
BY MAIL

Defendant
Appellee

STATE OF NEW YORK, COUNTY OF New York

ss.:

The undersigned being duly sworn, deposes and says:

*Deponent is not a party to the action, is over 18 years of age and resides at
872 E. 39 St., Brooklyn, N. Y., 11210*

That on October 4, 1976 deponent served the annexed
Brief

on Lyman Stansky, Esq., Davis, Polk & Wardwell, & Thal & Youtt
attorney(s) for Appellant and Appellees, respectively
in this action at

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper, in ~~an~~ ^{an} official depository under the exclusive care
and custody of the United States Postal Service within the State of New York.

Sworn to before me

Roy G. Nelson

Loretta Flaherty
The name signed must be printed beneath
Loretta Flaherty

ROY G. NELSON
Notary Public, State of New York
No. 41-8113201
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1978